Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

COMMENTS OF COX COMMUNICATIONS, INC.

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SUMMARY

Nearly every stakeholder agrees that intercarrier compensation must be reformed. The rule changes the Commission makes will have a profound effect on the continuing development of competition and on whether consumers can obtain the communications services they want and need in the future. Intercarrier compensation reform that maintains the status quo for incumbents will not serve the purposes of the Commission or the Communications Act. Simply put, the Commission must focus on fixing what is broken, not on preserving the revenues of current market participants. In that light, Cox's comments focus on a few key issues that the Commission must address.

First, the Commission should adopt a uniform rate structure for origination and termination of circuit-switched traffic, other than ISP-bound traffic, to the public switched telephone network. This structure could use either "bill and keep" compensation or compensation at some other level. However, the structure should maintain origination charges for calls sent by local carriers to IXCs, including presubscription, 1010xxx and toll free traffic, so that local carriers can recover their costs where the IXC has the retail relationship with the customer.

Second, the Commission should not accede to demands to replace lost access revenues. Doing so would be inappropriate because access revenues are declining and are likely to continue to decline with or without intercarrier compensation reform. The ICF's Intercarrier Compensation Recovery Mechanism should be rejected outright for this reason. Instead, the Commission should look to NARUC's proposal for use of a national benchmark to determine when LECs should be entitled to additional universal service support, and should require carriers to increase their subscriber line charges first, if they believe they must recover access

revenue shortfalls. The Commission should gradually transition to its new regime over a four year period to avoid sudden and negative repercussions in the market.

Third, incumbent LECs should be required to offer transit services at TELRIC rates. Transit services are essential to competitive LECs and wireless providers that cannot interconnect with all other carriers directly. Even a company like Cox, which has more than 100 interconnection agreements with non-incumbents, depends on transit service to reach most other carriers. A transit obligation is consistent with the requirements of Section 251(c)(2) and with the Commission's previous decisions. Thus, the Commission should reject the ICF proposal to increase transit rates to "market rates," and instead should adopt specific rules governing transit. These rules should include reasonable limitations that would permit incumbent LECs to increase transit charges only under certain circumstances and that would require carriers to enter into agreements for direct interconnection when transit usage exceeded certain thresholds.

The Commission also should avoid taking unnecessary actions in this proceeding. In particular, The Commission should not include IP-to-IP traffic in its new rules. There is no reason to entangle this traffic in the current regime. IP-to-IP traffic already is being exchanged through private arrangements, such as peering and transiting, without any regulatory involvement.

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Cox Communications, Inc. ("Cox") hereby files comments in response to the Commission's March 3 Notice of Proposed Rulemaking in the above-referenced proceeding.[1] Nearly all stakeholders agree that, in today's current intercarrier compensation regime, widely divergent rates that depend on carrier type, traffic direction and jurisdiction can lead to arbitrage incentives and improper implicit and unsustainable subsidies. Cox thus concurs with the Commission and others, including the Intercarrier Compensation Forum ("ICF"), that now is the time to address intercarrier compensation.[2]

In the Notice, the Commission seeks comment on intercarrier compensation reform proposals and the effects that reform may have on end users, carriers and universal service.[3] As a facilities-based provider of telephone services to residential and business customers, Cox

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[1] Developing a Unified Intercarrier Compensation Regime, *Further Notice of Proposed Rulemaking*, CC Docket No. 01-92, FCC 05-33, rel. March 3, 2005 (the "Notice").

[2] Notice, ¶ 3.

[3] Notice, ¶ 4. The proposals described in the Notice include: Regulatory Reform Proposal of the ICF, October 5, 2004; Alliance for Rational Intercarrier Compensation – Fair Affordable Comprehensive Telecommunications Solution, October 25, 2004 ("ARIC"); Expanded Portland Group Comprehensive Plan For Intercarrier Compensation, November 2, 2004 ("EPG"); National Association of Regulatory Commissioners Study Committee on Intercarrier Compensation – Goals for a New Intercarrier Compensation System, May 5, 2004 ("NARUC Principles"); National Association of Regulatory Commissioners Plan, March 1, 2005 Ex Parte ("NARUC Plan"); Cost-Based Intercarrier Coalition, September 2, 2004 ("CBICC"); and NASUCA Intercarrier Compensation Proposal, December 14, 2004 ("NASUCA"), et. al.

encourages the Commission to adopt fair, sustainable rules for intercarrier compensation that comply with existing statutes and that recognize the significant investment in local telephone competition made by Cox and other competitive local exchange companies ("competitive LECs").

In particular, the Commission should take this opportunity to confirm the duty of an incumbent carrier to provide transit service to competitive LECs.[4] The Commission also should be particularly wary of the ICF recommendations that would lock in the largest incumbent carriers' intercarrier compensation revenues at current levels, despite the evidence that those revenues already are declining and the strong likelihood that this decline will greatly accelerate after the purchase of the two largest long distance carriers by the two largest regional incumbent LECs.[5] The high costs of these "make whole" proposals bear careful evaluation, as they will be borne by all customers, including end user customers of the RBOCs, as well as Cox and other competitive LECs. Moreover, the Commission should not be swayed by warnings that universal service will be jeopardized if the ICF "make whole" proposals are rejected. There are less costly and more workable approaches available that will preserve universal service without forcing the marketplace to bear the unnecessary and anticompetitive cost(s) that would result from shoring up the revenue streams of a few large incumbent providers.

[4] Notice, ¶¶ 120-132.

[5] *See Public Notice*, "Commission Seeks Comment on Application for Consent to Transfer of Control Filed by SBC Communications Inc. and A&T Corp.," WC Dkt. No. 05-65, DA 05-656 (rel. Mar. 11, 2005), and *Public Notice*, "Commission Seeks Comment on Applications for Consent to Transfer of Control Filed by Verizon Communications, Inc. and MCI, Inc.," WC Dkt. No. 05-75, DA 05-762 (rel. Mar. 24, 2005).

After reviewing the proposals currently pending before the Commission, Cox recommends that the agency focus on five key considerations when developing a new intercarrier compensation regime:

(1) A unified (equal interstate/intrastate long distance/toll, inter/intra MTA and local) rate structure for all circuit-switched traffic originated or terminated to the PSTN is important to prevent improper arbitrage incentives and opportunities;[6]

(2) Reduced access revenues of large incumbent local exchange carriers should not be replaced automatically by creating new "make whole" provisions or increasing funding for existing universal service programs, although some offsetting increase in subscriber line charges ("SLCs") should be permitted;

(3) Fair and economical transit arrangements must be available to aid development of a truly competitive telecommunications marketplace; and

(4) Intercarrier compensation reform should not address the exchange of IP-to-IP traffic.

I. Introduction

With its affiliates, Cox is one of the largest facilities-based residential competitive LECs in the United States, serving both commercial and residential customers and providing customer choice and competitive rates for phone, video, and high speed Internet access services. Cox has grown by investing in a full and efficient end-to-end network in both rural and non-rural areas, and by providing outstanding and award-winning services. Cox has truly been one of the pioneers in offering both broadband service and circuit-switched telephony, spending over $12 billion to upgrade its cable networks to offer new and advanced services to approximately 10 million households. Because of this investment, today more than 97 percent of Cox's network carries two-way communications (*e.g.*, Cox High Speed Internet service, circuit-switched telephony and voice over IP services) and more than 1.4 million residential

[6] Because of its unique nature, ISP-bound circuit-switched traffic should continue to be identified and compensated either on a "bill and keep" basis or at the rate established in *ISP Remand Order*. Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, 16 FCC Rcd 9151 (2001), *remanded WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 1012 (2003).

customers and 140,000 business locations receive Cox Digital Telephone Service. Cox's efforts to provide a reliable, cost-effective, customer-friendly local telephone experience have not gone unnoticed. For two consecutive years, Cox has received highest honors in J.D. Power and Associates' Local Residential Telephone Customer Satisfaction Study in the Western Region (2003 and 2004) – beating SBC and Qwest, among others.[7] Nationwide, customers ranked Cox first in Customer Satisfaction in J.D. Power and Associates' 2004 Residential Long Distance Service study for bundled services.[8]

Successfully devising comprehensive changes to intercarrier compensation mechanisms and universal service are two of the biggest policy challenges for the telecommunications industry in recent years.[9] However, Cox is intensely concerned with the outcome of this proceeding because the Commission's actions will profoundly affect the future of competition in this industry, including Cox's ability to continue providing superior service at reasonable rates. While Cox's position as a facilities-based carrier has insulated it from many adverse effects of recent court and Commission decisions on other competitive LECs, and gives Cox flexibility that other carriers may lack, Cox's ability to compete *is* affected by the nature and extent of subsidies given to incumbent LECs and by the availability of fairly-priced transit services. Cox thus furnishes these comments from the standpoint of a competitor that entered the local telecommunications market within the last eight years and has achieved considerable success despite the defects in the current intercarrier compensation regime.

[7] J.D. Power and Associates 2003 Local Residential Telephone Customer Satisfaction Study℠ and 2004 Local Residential Telephone Customer Satisfaction Study.℠ 2003 Study conducted among 8,560 residential users of local telephone services. 2004 Study conducted among 10,500 residential users of local telephone services. The Western Region includes 16 states. http://www.jdpower.com.

[8] J.D. Power and Associates 2004 Residential Long Distance Customer Satisfaction Study.℠ Study conducted among 10,500 residential long-distance users. Bundled segment includes residential long-distance customers who are billed for other telecom services on the same statement. http:// www.jdpower.com.

[9] See separate statements of Chairman Powell and Commissioners Abernathy, Copps and Adelstein.

The Commission seeks to replace the current system with "a new, unified intercarrier compensation regime that is better suited to a market characterized by competition among multiple types of carriers and technologies."[10] The Notice identifies three overarching areas of the current regime that require examination: (1) Existing intercarrier payments are based on jurisdictional and regulatory differences that are not tied to economic or technical distinctions between services; (2) the existing compensation regime is predicated on the recovery of average costs on a per-minute basis that may no longer be correct; and (3) the "calling-party-network-pays" approach is no longer sustainable in today's environment where a multitude of carriers and technologies compete for subscribers.[11]

Many of the objectives associated with these areas can be realized by the Commission's adoption of some key concepts. First, intercarrier compensation reform must be as competitively neutral as possible, and the FCC should strive to adopt rules that minimize the potential for the regulatory arbitrage that plagues the current patchwork system of intercarrier payments. At the same time, the Commission must resist calls for "revenue neutrality," that is, any approach that seeks to make up all of a carrier's lost revenues caused by reductions in some forms of intercarrier compensation or other transport charges through increases in other forms of such compensation. Such an outcome would skew the efficient workings of the marketplace and undermine the goal of competitive neutrality.

Second, the Commission must not permit carriers to obtain access to LECs' retail customers through those LECs' local exchange networks without fair compensation. For example, the "dialing parity" provisions of the Act and the Commission's rules require pre-

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[10] Notice, ¶ 17.

[11] *Id.*, ¶¶ 15-17.

subscription of local toll and long distance service to the carrier of the customer's choice.[12] Today's access charge system compensates LECs for the costs associated with providing that access. Proposals which entirely eliminate that compensation are incompatible with the obligation to continue to provide such access services to third parties.

Third, as a general rule, the focus of reform must be to correct inconsistencies in today's intercarrier compensation arrangements, while protecting universal service and minimizing the need to increase funds already allocated for its support. The Commission also must consider the burden placed on customers if increased end user charges replace some forms of intercarrier payments. To achieve these ends, the Commission, where possible, should adopt unified rate structures for traffic originated or terminated to the public switched network.[13] These structures should be indifferent to the type of network deployed by the service provider (*e.g.*, facilities-based or non-facilities-based), as well as to the class of provider (*e.g.*, incumbent LEC, competitive LEC, IXC, Commercial Mobile Radio Service provider or Internet protocol-enabled).

While some modifications to the plan developed by NARUC are needed (as explained in more detail below), Cox believes that NARUC's principles and proposed rules achieve many of the Commission's objectives in establishing a unified intercarrier compensation regime. Cox understands that the NARUC Plan is still subject to changes as a result of the exhaustive collaborative efforts undertaken by the NARUC Intercarrier Compensation Sub-Committee over the past year, and that details of those changes were still under evaluation as these opening comments were prepared. Cox applauds the accomplishments of this Sub-Committee, both for

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[12] 47 U.S.C. § 251(b); 47 C.F.R. § 51.209.

[13] As noted above, there should be separate treatment for dial-up ISP-bound traffic.

its efforts to bring all segments of the industry together to discuss and debate the merits of the various proposals, and for its willingness to pick the best of each of them and attempt to meld them into a "best in class" approach to solving these complex issues. Cox expects to comment on the details of the modified NARUC proposal on reply.

II. A Unified Rate Structure for All Circuit-Switched Traffic Originated or Terminated to the PSTN Is Important to Prevent Improper Arbitrage Incentives and Opportunities.

To minimize arbitrage opportunities, the Commission should require that a carrier that provides a particular service or function should charge the same amount to all carriers regardless of those carriers' classification (*e.g.*, the architecture or protocols that they use) and the jurisdiction (interstate or intrastate) of the traffic. For example, incumbent LECs, and all other carriers, should be allowed to adopt without cost studies a unified termination charge depending upon the particular size of any given wire center. This approach accounts for the basic cost characteristics of the areas served and allows all telecommunications providers to have an opportunity to earn a reasonable return for use of the network. This concept is supported by NARUC.[14]

Although maintaining some intercarrier compensation payments at a unified rate is good policy (both to ensure the opportunity to recover costs and to minimize the need for any additional subsidy payments to incumbent LECs), Cox recognizes that arbitrage opportunities in the terminating direction are less significant than those in the originating direction.[15] Cox, therefore, would not oppose the adoption of "bill and keep" as the end goal for termination of local traffic between carriers as an alternative to the NARUC Plan rates. As the Commission

[14] NARUC Plan at 5.

[15] This is so because it is easier for a customer to choose the carrier who originates a call. That same customer does not generally have any control over the carrier that completes the call.

staff analysis and others have noted, "bill and keep" does have the advantage of eliminating administrative costs while resolving arbitrage opportunities. Adopting "bill and keep" for call termination also eliminates the need to maintain a separate termination rate for dial-up ISP-bound traffic.

A. Intercarrier Compensation Reform Must Not Eliminate All Origination Charges.

While ARIC, EPG, and CBICC maintain originating access charges, ICF takes the position that eliminating originating charges will assist in avoiding arbitrage opportunities.[16] However, Cox finds NARUC's alternative origination plan more reasonable than these proposals. This plan suggests an origination rate of $0.002 per minute of use ("MOU") of originating access traffic, to mirror the terminating access rate.[17] This rate would be applied to all originating traffic sent to an IXC based on pre-subscription of the customer's line ("PIC" or "L-PIC"), dialing access codes (1010xxx codes) and toll-free calls (*e.g.*, calls to 800 or 866 NPA numbers). Charges for these types of calls have not been subject to arbitrage, unlike terminating rates, which vary by class of carrier and jurisdiction without any difference in the function provided. An origination rate also could be tiered, as NARUC suggests for terminating rates, to better reflect the cost structure of high-cost and small rural exchanges.

Maintaining originating access charges ensures that carriers that own or control local exchange facilities continue to be compensated for the costs of implementing their respective "equal access" legal obligations, which require carriers to allow others to establish a retail relationship with the LEC's subscriber. In fact, the Commission should reject any intercarrier

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[16] ARIC Proposal at 1; EPG Proposal at 7; CBICC Proposal at 3; ICF Plan at 1.

[17] NARUC Plan at 13. Even if the terminating rate is ultimately set to zero (*i.e.*, bill and keep), $0.002 per MOU is still an appropriate rate for origination because it is substantially lower than most intrastate and interstate access rates and consistent with NARUC's model rate structure for the national uniform termination charge. *Id.* at 5.

compensation plan that eliminates originating access charges outright, since carriers like Cox will be required to provide "equal access" to customers who have presubscribed to other carriers' long distances services or use "1010-XXX" dial-around codes to reach alternative providers.[18]

Another reason not to eliminate all originating charges is that originating carriers carry billions of minutes of toll free service calls that are handed off to retail carriers. Many of these toll-free calls are in fact also access arrangements for pre-paid calling cards and alternate long distance services. If these third party carriers do not have to pay for access to a local exchange carrier's network to originate traffic, they will enjoy a competitive advantage. Moreover, adopting a "bill and keep" regime for such access to the LEC's network would invite new forms of arbitrage that would result in further uncompensated use of originating LEC network capacity for the benefit of IXCs. Therefore, the Commission should permit reasonable originating access charges where the other carrier uses the network of the local provider to generate retail revenue (*i.e.*, pre-subscription, 1010-XXX dialing and toll-free calling).

Under this "Retail Provider Pays" arrangement, the rate paid by an IXC would not depend upon the originating LEC, the location of the IXC's customer, or the jurisdictional classification of the IXC's terminating carrier, but rather would be set at a low but uniform level. This approach could well increase the availability of favorable toll rate plans to rural customers – an express goal of 47 U.S.C. Sec. 254(g) – while preserving fair compensation for the originating LEC.

[18] This is not to suggest that voice over Internet Protocal ("VoIP") providers have an obligation to afford equal access/pre-subscription to other carriers. Further, the Commission does not need to extend today's existing rules on intercarrier compensation to the exchange of traffic among IP-to-IP providers, who often enter into commercial negotiated agreements.

If the Commission does not adopt uniform originating compensation, it either should forbear from enforcement of the dialing parity and "equal access" obligation or, at a minimum, permit LECs to charge end users an "alternate carrier" charge, similar to the current pre-subscription charge, to recover the costs of providing access to the customer's choice of IXC. This could take the form of a per-call or per-minute surcharge on 1010XXX calls. Toll free calls still would be uncompensated unless the Commission developed a mechanism to permit billing to the toll-free provider.

B. With Some Modification, the Wireline Competition Bureau's Bill and Keep Analysis Is Fair and Reasonable.

The Notice requests that carriers comment on the Wireline Competition Bureau's bill-and-keep analysis. As noted above, Cox agrees that a transition to bill-and-keep has merit and should be considered as the preferred post-transition compensation scheme between all carriers for terminating access and for originating traffic other than traffic sent from LECs to IXCs as a result of presubscription, 1010xxx dialing or toll-free calling. As recognized by the Wireline Competition Bureau, bill-and-keep would eliminate many of today's intercarrier compensation payment disputes.[19] A bill-and-keep regime is particularly attractive where traffic between carriers is materially in balance.

This modified approach addresses many of the objections to "bill-and-keep," since uniform compensation in the form of originating access charges for the use of a LEC's networks would be available where appropriate, while carriers also could recover remaining costs through end user charges and, if proven necessary, an increase in rates. Thus, with these modifications, Cox would not oppose an eventual transition to "bill and keep" as the end goal for termination of traffic between carriers.

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[19] Notice, Appendix C at p. 108.

C. Reduced Access Revenues of Large Incumbent LECs Should Not Be Automatically Replaced.

As part of any universal service reform, incumbent LECs should not be entitled to revenue neutrality through a mechanism that uses today's intercarrier compensation revenues as a means of determining their entitlement to new or additional USF funding. Under the ICF Plan, price-cap and rate-of-return incumbent LECs would be able to recover foregone revenues via a new USF mechanism called the Intercarrier Compensation Recovery Mechanism ("ICRM"), made available only to incumbent LECs and competitive eligible telecommunications carriers ("ETC").[20] From the ICRM, incumbent LECs would recover all lost revenue for access services being transitioned to "bill-and-keep;" any revenue reduction from transit rate adjustments; and changes in revenue associated with interconnection transport modifications.[21] In short, the ICRM, as proposed by ICF, would unjustly insulate the largest carriers from any losses in revenues that might result from a restructuring of the intercarrier compensation rules by inflating the universal service fund.

The universal service fund's primary objective, however, is to ensure that customers in more rural areas can obtain primary service from their provider of choice. Certainly USF should not be used to protect all incumbent LEC revenues from being reduced as a result of intercarrier compensation reform. As the Fifth Circuit explained, "[t]he Act does *not* guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market. The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*."[22] Of course, the

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[20] ICF Plan at 69.

[21] *Id.* at 48-54.

[22] Alenco Comms., Inc. v. FCC, 201 F.3d 608, 620 (5th Cir. 2000) (emphasis in original).

ICRM would do nothing to curb the growth of the universal service fund – a key concern of regulators for a number of years. Instead, replacing incumbent's carrier compensation with explicit federal support would cause the fund to balloon while imposing additional burdens on all providers to subsidize incumbent LECs. Indeed, such an approach would discriminate among competitive LECs, many of whom also stand to lose intercarrier compensation revenue under any restructuring, but have not been designated as competitive ETCs.

In contrast to the ICF, the NARUC Plan does not mandate a new federal support program for incumbent LECs. Rather, it proposes that the need for universal service support be determined by using a national benchmark level for local exchange recovery of 125 percent of the average urban rate, inclusive of interstate and intrastate subscriber line charges ("SLCs").[23] All carriers would be afforded the same opportunity to raise SLCs in measured steps tied to the reductions in intercarrier payments as a way to recoup foregone intercarrier compensation revenue. Those carriers that choose to do so would cover a portion of costs formerly covered by access charges, while curbing reliance on the universal service fund. In addition, under the NARUC Plan, states would be responsible for adopting appropriate earnings tests to determine whether additional universal services funds are warranted.[24] If a non-rural incumbent LEC wished to seek additional revenue replacement beyond increased SLCs because of an exogenous event (such as the required reduction of access charges to a lower, uniform reciprocal compensation charge), it would be permitted to petition the appropriate state utility commission for approval of a proposed rate increase. These increases would occur before an

[23] NARUC Plan at 9. NASUCA also suggests the Commission establish target rates for guidance to the states. NASUCA at 3.

[24] NARUC Plan at 9-10

actual determination is made, according to the earnings test, that additional universal service funds are required.

It is especially inappropriate to adopt any proposal (such as the ICF plan) that guarantees incumbent LEC access and transport revenues at their *current* levels. Incumbent LEC revenues from access charges have been declining for years. Increasing RBOC long distance market share as a result of successful Section 271 applications and the movement of long distance calling from landline to wireless networks both have contributed greatly to this decline, and the proposed purchases of AT&T and MCI, the two largest independent providers of long distance service, will accelerate this trend. Consequently, the Commission should reject this aspect of the ICF proposal and instead adopt the more reasoned approach recommended by NARUC.

The Commission also should adopt a national benchmark that would include increasing local rates (including SLCs) to avoid adding to the universal service burden by providing federal support to LECs with very low local rates that are insufficient to recover the cost of local service from their own end users. NARUC's proposed benchmark of the national average urban rate plus the SLC cap is a fair and reasonable approach that would give LECs and state commissions the incentive to raise rates that are artificially low. While some commenters in this proceeding voice concern about the level of state involvement in the intercarrier compensation reform process,[25] the Commission should recognize and respect states' concern over traditional ratemaking practices and their authority to set retail rates. And under the benchmarking approach proposed by NARUC, states will adopt reasonable and uniform

[25] ICF Ex Parte Brief, October 25, 2004, at 45.

standards in determining the amount that carriers would draw from the USF, which would go a long way in stabilizing the fund.

The transition from today's myriad of rates and conditions for exchange of traffic should be accomplished over a reasonable time so as to "equalize" the stepping down of intercarrier payments and the corresponding stepping up of SLC charges and any other necessary funding for rural carriers. The NARUC proposal suggests a four-year transition period, with roughly equal annual steps. Cox agrees this is the most reasonable approach. A four-year period balances the need to avoid sudden disruption in current payment and support arrangements, with the goal of accomplishing the transition in a reasonable time limit.

III. Incumbents Must Offer Transit Services at Cost-Based Rates.

The Commission correctly raises the important topic of transit services in the Notice.[26] This is a matter of crucial concern to all competitive LECs and wireless service providers, because they rely on incumbent LEC transit services to interconnect their networks indirectly with the networks of other providers that are connected directly to incumbent LEC tandem switches. Transit traffic arrangements are used routinely by local exchange carriers to allow their customers to complete calls to each other's customers where it would be uneconomic to interconnect their networks directly. IXCs and wireless carriers also choose whether to directly connect to competitive LEC networks, or to exchange traffic through the incumbents' tandem switches. While Cox aggressively seeks direct interconnection arrangements to complete its end users' traffic to end users of other carriers, Cox still pays more than $500,000 per month to incumbent LECs for incumbent LECs' transit services.

[26] Notice, ¶¶ 120-132.

Transit traffic arrangements are not new. Interexchange traffic has transited incumbent networks for nearly two decades. "Meet Point Billing" arrangements represent the standard methodology developed by the telecommunications industry to govern how interexchange traffic will be exchanged and how each carrier will bill other carriers for its part in carrying it. For traffic associated with commercial mobile radio services, "Type 2A" interconnection (a trunking arrangement where a wireless carrier establishes a trunk group to the incumbent LEC's tandem for indirect interconnection to the incumbent's end offices, as well as other competitive-, independent- and rural LECs, that subtend the tandem) has been in use since the late 1980s and is still in use today. It is only since the enactment of the 1996 Act that a significant volume of local traffic has been originated by competitive LECs, such as Cox and routed through incumbent LECs' tandems to reach the end users of other carriers. However, the interexchange transit traffic methodology, incorporated into the Meet Point Billing arrangement, was the model used by incumbent LECs and competitive LECs to establish local traffic transit arrangements.

Section 251(c)(2) of the 1996 Act states:

> (c) Additional obligations of incumbent local exchange carriers
>
> In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:
>
> ...
>
> (2) Interconnection
> The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network -
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
> (B) at any technically feasible point within the carrier's network;
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

> (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.[27]

The obligations of Section 251(c) are imposed only on incumbent LECs to compel them to take specific steps to open their ubiquitous networks to their competitors.[28]

Subsection A of Section 251(c)(2) specifically requires incumbents to interconnect their networks with those of requesting carriers "for the transmission and routing of telephone exchange service and exchange access."[29] Some incumbents have argued that, notwithstanding this straightforward directive, transit traffic arrangements are not *necessary* for competitors' provision of telecommunications service because competitors are free to interconnect their networks directly with each other. Subsumed within that argument is the notion that access to an incumbent's network is permitted only when the incumbent's end user customer is involved with a call. Yet nothing in Section 251(c)(2) limits a requesting carrier to interconnection with the incumbent to route traffic to and from the incumbent's customers. Likewise, nothing in the definitions of "telephone exchange service" and "exchange access" limits those terms to traffic going to or from an incumbent's customer.[30]

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[27] 47 U.S.C. § 251(c).

[28] The Supreme Court recently recognized that Congress intended unequal burdens on the "incumbent monopolists" and contending competitors. *Verizon Comms. Inc. v. FCC*, 535 U.S. 467, 533 (2002).

[29] 47 U.S.C. § 251(c)(2) (emphasis added).

[30] Section 153(47) of the Act defines "telephone exchange service" as: "(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service." 47 U.S.C. 153(47). Section 153(16) of the Act defines "exchange access" as: "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. 153(16) (2002).

Carriers interconnect with an incumbent's tandem switch to reach both the incumbent's customers and customers of other carriers. Nothing in subsection A of Section 251(c)(2) or elsewhere in the 1996 Act precludes competitive LECs from interconnecting indirectly via the incumbent's tandem switch to reach third party carrier customers. Indeed, the Commission envisioned tandem transiting arrangements when it stated that: "Given the lack of market power by telecommunication carriers required to provide interconnection via section 251(a), and the clear language of the statute, we find that indirect connection (*e.g.*, two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a)."[31] For these reasons, subsection A does not limit interconnection to traffic between the customers of the incumbent and the requesting carrier. In fact, as the operators of hierarchical switched networks with tandem switches designed exclusively to direct calls efficiently to and from various switches, incumbent LECs are in a unique position. All connecting competitive LEC and wireless provider numbers in operation are shown as "subtending" one of those tandem switches in the Local Exchange Routing Guide.

Moreover, subsection B of Section 251(c)(2) authorizes competitors to interconnect "at any technically feasible point" within incumbents' networks.[32] Tandem interconnection is technically feasible, and incumbents have long offered that form of interconnection. It cannot be successfully argued that subsection B was not intended to compel tandem interconnection for certain traffic, *i.e.*, transit traffic, for certain classes of carriers, *e.g.*, competitive LECs.

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[31] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 15991 (1996).

[32] 47 U.S.C. § 251(c)(2)(B).

Nothing in Section 251(c)(2) supports denying interconnection at a technically feasible point that is otherwise required by subsection B.

Finally, subsection C requires an incumbent to provide interconnection that is "at least equal in quality" to that provided "any other party to which it provides interconnection."[33] Similarly, subsection D obligates incumbents to interconnect on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory" and in accordance with Section 252.[34] Such expansive language demonstrates a congressional intent to widen the forms of interconnection that incumbents must make available to competitors. Accordingly, there is no hint in this language of any intent to restrict interconnection, either based on an unspecified limitation relating to the class of interconnected carrier, the type of traffic transiting the tandem switch, or for any other reason.

In short, Section 251(c)(2) of the 1996 Act provides a clear directive as to how transit arrangements for local traffic exchanged between incumbents and their competitors should be regulated. The Commission and state regulators must determine whether rates, terms and conditions for transit services are just, reasonable, and nondiscriminatory, as specified by Congress. They also are the only authorities that can judge whether the quality of interconnection provided by incumbents to competitors is at least equal to that provided by incumbents to themselves, their subsidiaries, affiliates, or to other interconnecting parties. Similarly, federal and state regulators alone can ascertain whether an incumbent has complied with its obligations to interconnect at any technically feasible point within its network. Finally, only they can enforce the requirement that incumbents permit interconnection for the

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[33] *Id.* § 251(c)(2)(C).

[34] *Id.* § 251(c)(2)(D).

transmission and routing of telephone exchange service and exchange access traffic. Federal law thus offers abundant authority for regulating incumbent transit services in the manner proposed herein.

In this context, the Commission must ensure that fair and economical transit arrangements are securely in place to maintain and develop a competitive telecommunications marketplace. Cox is primarily concerned that the implementation of the ICF Plan would immediately increase transit rates for all carriers, driving them closer to the rates paid by IXCs for access traffic and, over time, steadily increasing them to purported "market rates."[35] Yet, there is no "market" for transit services, and the ICF Plan would serve only to put unreasonable rates in place for an essential service with no substitutes. Therefore, any effort to pursue the notion that "market rates" for transit service can be established now or in the future would be premature, even if federal law did not require the rates for these services to be based on costs. Accordingly, the ICF Plan is fatally defective in this regard.

There is no justification in the record for a proposal that would increase the rates paid by carriers for transit service. If, however, the Commission is persuaded that a shift in transit compensation policy is appropriate, then any changes should be made only with protections and limitations in place that restrain the ability of incumbent LECs to increase transit rates. Cox proposes the following steps as a compromise approach that takes into account engineering efficiency principles and the time necessary for transiting carriers to reach agreements to directly interconnect their networks with each other.

[35] Worse, under the ICF proposal, all traffic from competitive LECs directed through an incumbent LEC tandem switch and now billed as jointly-provided switched access would become "transit traffic," and the competitive LEC would be required to pay the incumbent LEC to carry the traffic.

Cox recognizes that it may not be efficient for incumbent LECs to be required to provide transit service without any traffic limitations or conditions. However, any limitations the Commission might impose should be based on economically efficient interconnection principles and network interconnection arrangements that a rational carrier would employ. For instance, it may be reasonable to conclude that transit at TELRIC rates should not be available when it would be economically efficient for a competitive LEC to use a direct connection instead, a point that typically is reached when two providers are exchanging traffic at the level equivalent to what would be carried by ten DS-1s for three consecutive months.[36] If this transit threshold is exceeded, the incumbent LEC could charge higher than TELRIC rates for the transit traffic. The transit threshold could be lowered to five DS-1s over three consecutive months in circumstances when incumbent LECs can demonstrate that transit service is responsible for tandem exhaust.

When these thresholds are reached, neither of the transiting parties should be permitted to refuse to enter into an agreement for direct interconnection. Cox's experience in entering into more than 100 interconnection agreements with competitive LECs and wireless providers across its 11-state footprint makes it appreciate how much time and effort is necessary to effect direct interconnection. However, in the absence of a specific requirement, many carriers may not make negotiation and implementation of direct interconnection a priority. Thus, the Commission should put a specific, reasonable time limit on the process.

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[36] When engineering a new direct interconnection between LECs, carriers generally build or obtain an efficient transmission vehicle, such as DS-3 over fiber optic cable, for such purpose. Depending on its source, the cost of a single DS-3 connection is typically equivalent to the cost of between eight and twelve individual DS-1s. The use of ten DS-1s as a triggering mechanism represents a point where deployment of direct interoffice facilities between two LECs makes economic sense. While it might make engineering sense for a competitive LEC and incumbent LEC to establish direct trunk groups at a lower threshold of traffic, this is because they are simply breaking out individual trunk groups from a larger facility used to carry the traffic between them. For direct connection to be economically feasible between two carriers with no existing trunks, a DS-3 level facility would be the minimum requirement.

Further, the Commission should limit the points of interconnection used for transit to points within the incumbent's tandem completing field, *i.e.*, within the geographic footprint of incumbent and offices served by a particular tandem. This arrangement mimics the end office-to-tandem trunking arrangements used by the incumbent for its own tandem-routed traffic. Incumbent LECs also should not be required to pass through termination charges to transiting carriers. Instead, those carriers should be responsible for their own payment arrangements unless the incumbent LEC voluntarily provides a "clearinghouse" function, by offering either a consolidated transit and termination rate for transit traffic or a pass through. To further minimize the potential for disagreement on this issue, the Commission should require carriers that do not have an interconnection agreement and that exchange local traffic via a tandem transit provider to do so on a bill and keep basis. This requirement would mimic the *de facto* arrangements used by many carriers today.

In response to specific inquiries from the Commission relating to transit services,[37] Cox recommends that the Commission make the following findings:

1. Providing transit service is a Section 251(c) obligation.

Such a finding:

(a) resolves/harmonizes the disparate interconnection requirements vis-à-vis Section 251(c) and Section 25(a) interconnection obligations;

(b) acknowledges that the ubiquitous networks owned and controlled by incumbent LECs amount to monopoly bottlenecks to wholesale interconnection;

(c) prevents the costly network overbuild that direct competitive LEC-to-competitive LEC interconnection would entail;

(d) includes the requirement for TELRIC rates except where, as described below, traffic volume thresholds and certain other conditions are met.

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[37] Notice, ¶¶ 127-132

2. Reasonable limitations on incumbent LEC transiting may be applied.

(a) An incumbent LEC may not refuse to carry transit traffic.

(b) To encourage carriers to establish direct interconnection when traffic volumes warrant it, an incumbent LEC may charge access rates, *i.e.*, interstate FG-D tandem switching and tandem transport, for transit traffic (switched through a single tandem) that exceeds the equivalent of ten DS-1s between two LEC/CMRS switches.

(c) To the extent an incumbent LEC can prove to the Commission that its transit service is responsible for tandem exhaust, an incumbent LEC may charge access rates, *i.e.*, interstate FG-D tandem switching and tandem switched transport, for transit traffic (switched through that tandem) that exceeds the equivalent of five DS-1s between two LEC/CMRS carrier switches.

(d) The interconnection point used for transiting traffic must be located within an incumbent LEC tandem's completing field or tandem serving area.

3. An incumbent LEC should not be obligated to provide a "clearinghouse" function, *i.e.*, it should not have to pay the terminating carrier for termination of the originating carrier's traffic.

4. Absent an interconnection agreement, local and ISP-bound traffic exchanged between competitive LECs and/or CMRS providers via a tandem transit provider should be compensated on a "bill and keep" basis between the competitive LECs and/or CMRS providers.

5. Where the incumbent LEC transit triggers for direct interconnection shown above are met, the transiting parties shall be obligated to enter into agreements for direct interconnection arrangements no later than 180 days after reaching the trigger.

IV. Intercarrier Compensation Reform Should Not Address the Exchange of IP to IP Traffic.

Some commenters, including ARIC and EPG, seek to apply intercarrier compensation mechanisms from today's circuit-switched interconnection to the IP interconnection of the future. Cox agrees with the NARUC and ICF plans, which make clear that their intercarrier compensation reform proposals do not apply to VoIP services, except to the extent VoIP calls use the public switched network. Intercarrier compensation reform should not be imposed on

IP-IP traffic exchange because it uses many different network configurations and connects with incumbent and competitive service providers in very different ways, via either the Internet or private managed IP networks whose operators agree to terms for mutual exchange of IP packets. The advent of IP-based voice services requires the Commission to ensure that a regulatory framework established to deal with myriad intercarrier compensation and interconnection issues affecting circuit-switched providers does not interfere with the commercial IP-IP peering and transiting arrangements that now function efficiently and are evolving without regulatory intervention. The Commission should reject any attempts to affect the exchange of traffic on an IP-to-IP basis and instead should avoid regulating in this area unless specific problems arise that cannot be resolved through voluntary negotiations.

V. Conclusion

This is one of the most significant Commission proceedings of the last several years. Appropriate intercarrier compensation reform can fuel the development of economically efficient competition in both local and long distance service while meeting the Commission's important universal service objectives. However, the Commission must avoid the temptation to create new, unnecessary subsidies that protect incumbent LEC revenues against the effects of competition. For these reasons, any rules adopted in this proceeding should be consistent with the following considerations:

- Reform is necessary but needs to be consistent with Congressional intent as set forth in the 1996 Act.
- Reform must be carefully considered/gradually transitioned so as to avoid negative repercussions to the development of competition in the local exchange service market.
- The Commission should adopt many of the elements of the NARUC Plan and should include originating access for calls directed to IXCs.

- Tandem transit service is a Section 251(c) obligation. However, reasonable limitations on incumbent LEC transiting may be applied.

- Reaffirming interconnection rights is an essential prerequisite for any type of national intercarrier compensation reform.

- "Bill and keep" is the preferred post-transition compensation mechanism for termination between carriers access.

For all the reasons described above, the Commission should adopt rules in this proceeding that are consistent with these comments.

Respectfully submitted,

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May 23, 2005

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 23rd day of May, 2005, copies of the foregoing Comments of Cox Communications, Inc. were served by hand delivery on the following:

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